

May 15, 2009

**TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT**

**Adoption of Title 22, California Code of Regulations  
Section 2706-7**

**FAMILY TEMPORARY DISABILITY INSURANCE BENEFITS  
PENDING APPEAL**

**Notice of Proposed Rulemaking**

The Employment Development Department (Department) proposes to adopt California Code of Regulations (CCR), title 22, section 2706-7, in order to establish the distinct requirements and proper regulatory references when determining whether a claimant is eligible or ineligible to receive payment of Family Temporary Disability Insurance (FTDI) benefits pending an appeal.

The Department will adopt this regulation after considering all comments, objections, or recommendations regarding the proposed regulatory action.

**Informative Digest/Policy Statement Overview:**

The State Disability Insurance (SDI) program was established in 1946 to provide a partial wage replacement to eligible workers who were unable to perform their regular or customary work due to an illness or injury that was not work related. The enactment of Senate Bill (SB) 1661 (Chapter 901, Statutes 2002) and SB 727 (Chapter 797, Statutes 2003) established the FTDI program, also known as the Paid Family Leave (PFL) program, as a component of the SDI program.

The FTDI benefit expands the scope of the SDI program to provide partial wage replacement to workers taking family care leave and is administered by the Department in accordance with the provisions of Part 2 (commencing with section 2601) of the California Unemployment Insurance Code (code). FTDI benefits are provided to workers who are unable to perform their regular or customary work when taking family care leave to either provide care for a seriously ill child, spouse, parent, registered domestic partner or bond with a new child. FTDI benefits became available for eligible workers as of July 1, 2004.

Title 22, section 2706-5 of the CCR establishes criteria which provide that Disability Insurance (DI) benefit payments may continue in situations where the Department initially determines a claimant eligible for benefits, but thereafter determines the

claimant ineligible or disqualified for further benefits, and the claimant files an appeal as a result of the subsequent determination. This section was established specifically to address circumstances related to DI benefits as a result of a claimant's own illness or injury; however, it does not provide sufficient criteria applicable for the payment of FTDI benefits pending an appeal by a claimant as a result of taking family care leave.

Under code sections 305 and 306, the Department is authorized to adopt, amend, or repeal regulations for the administration of the functions of the Department. Under code sections 2625, 2706, and 2708, SDI benefits are payable from the Disability Fund to individuals who file a claim for benefits in accordance with authorized regulations and are eligible to receive such benefit payments.

Currently, the provisions of section 2706-5 of the CCR prescribe requirements for the administration of DI benefits pending appeal by a claimant. The provisions within section 2706-5 of the CCR are exclusive to DI benefits and are not applicable to FTDI benefits. Thus, the adoption of section 2706-7 is necessary to establish the distinct requirements and proper regulatory references when determining whether a claimant is eligible or ineligible to receive payment of FTDI benefits pending an appeal.

**Authority and Reference:**

Authority: Sections 305, 306, 2706 and 3300, Unemployment Insurance Code.

Reference: Sections 1335, 1336 and 2706, Unemployment Insurance Code.

**Fiscal Impact:**

**Anticipated costs or savings in federal funding to the State:** None

**Anticipated costs or savings to any State Agency:** None

**Anticipated costs or savings to any local agency or school district:** None

**Significant statewide adverse economic impact:** The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The proposed regulation will help clarify existing regulations by establishing new provisions focused primarily on determining eligibility for payment of FTDI benefits pending an appeal without imposing any new requirements on businesses. The Department has determined that the proposed regulation will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

**The cost impact on representative persons or businesses:** The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Anticipated impact on housing costs:** The proposed regulation will have no effect on housing costs.

**Anticipated non-discretionary costs or savings imposed upon local agencies:**  
None

**Small Business Impact:**

The proposed regulation in and of itself will have no effect on small businesses. The proposed regulation will help clarify existing regulations by establishing new provisions focused on determining eligibility for payment of FTDI benefits pending an appeal without imposing any new requirements on small business. The proposed regulation does not require that small businesses take any action or refrain from taking any action in regards to conducting business.

**Local Mandate Determination:**

The Department has determined that the proposed regulation will not impose any new mandates on school districts or other local governmental agencies or any new mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

**Consideration of Alternatives:**

In accordance with section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

**Written Comment Period:**

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Laura Colozzi via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). **E-mail comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than June 29, 2009, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

## Contact Persons

Inquiries or comments should be directed to:

(Mailing address) Laura Colozzi, Legal Analyst  
Employment Development Department  
P. O. Box 826880  
Legal Office, MIC 53  
Sacramento, CA 94280-0001

(Hand delivery) Laura Colozzi, Legal Analyst  
Employment Development Department  
800 Capitol Mall, Room 5020  
Legal Office, MIC 53  
Sacramento, CA 95814

Telephone No.: (916) 654-7712  
Fax No.: (916) 654-9069  
E-Mail Address: [eddlegal@edd.ca.gov](mailto:eddlegal@edd.ca.gov)

**Note:** In the event Laura is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Penny Ayers, Legal Analyst  
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed to:

Name: Estela Gallawa, Staff Counsel  
Telephone No.: (916) 654-8410

## Internet Website Access

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed Regulations."

### **Public Hearing:**

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on June 29, 2009.** A request for hearing can be made by contacting the persons noted above.

### **Modification of Proposed Action:**

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made

available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

**Final Statement of Reasons:**

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

**Further Information:**

The Department has prepared and has available for review, upon request, the text of the proposed regulations discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the proposed regulations; and the information upon which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.

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